

Democratic Regression in Thailand: The Ambivalent Role of Civil Society and Political Institutions

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Since late 2005, Thailand has been mired in a deep political crisis that has now gone through two coups: September 2006 and May 2014. The two coups have revealed deep ambiguities in the roles that civil society and political institutions, especially constitutions and constitutional courts, play in the polity. Although one generally expects civil society and constitutional structures to address democratic goals related to enfranchisement, accountability and political rights, what one witnesses in Thailand is something completely different. Civil society and constitutional actors have been driven by partisan interests rather than democratic values. In both the lead-up to the 2006 and 2014 coups, civil society forces mobilized forcefully on the streets of Bangkok to oust democratically-elected governments. In the process, they provided the political space and legitimacy for the military to intervene. Constitutional courts and constitutions have also worked to further anti-democratic ends. The drafting of the 2007 Constitution was an unequivocal effort to weaken political parties and bring back a landscape of institutional fragmentation, with the ultimate goal of

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preventing Thaksin Shinawatra and his allies from returning to power. The Constitutional Court has also handed down numerous verdicts that reflect political interests rather than the objective application of the rule of law. Thus, Thailand's democratic polity rests on quicksand: social forces and institutions that are expected to strengthen democracy have shown themselves to be deeply ambivalent about their relationship to democracy.

Keywords: democratization, democratic consolidation, civil society, NGOs, constitution, political institutions, Thailand.

A general image has now emerged of Thailand in the past eight years (2006–14): one characterized by a spiral of political instability, street mobilization and violence, and clear democratic regression. All of this is somewhat surprising given the fourteen years of democratic progress that occurred between 1992 and 2006. Even more puzzling than the political decay that has gripped Thailand is the fact that the actors and institutions involved in this democratic regression have included those that one generally equates with liberal values. Civil society, judicial courts, and constitutional structures have all contributed to a weakening of Thailand's democracy. Certainly military intervention has served as the coup de grace that on both 19 September 2006 and 22 May 2014 brought democracy to its demise. However, the military only acted after violent street protests that sought to oust democratically-elected governments and paralyzed parts of Bangkok. Thailand now finds itself in a situation it has never faced before: a democracy under threat not just from the usual suspects such as the military, but from unexpected actors, such as the judiciary and civil society.

This special issue of *Contemporary Southeast Asia*, "The Challenges of Democratic Consolidation in Thailand", revisits the underlying forces and institutions that have contributed to Thailand's democratic regression. With an emphasis on civil society, political institutions and violence, it poses the following question: what are some of the conditions that have contributed to the collapse of democracy in Thailand? More specifically, it asks: what has civil society's role been in the erosion of democracy? Has the judiciary been a source of objective rulings or a forum for the advancement of partisan interests? What is the relationship between violence and elections? How do rules on party banning affect party development?

The main theme pursued in this special issue is that the "normal" patterns of democratic development that we are accustomed to seeing

in consolidating democracies are not present in Thailand. First, non-governmental organizations (NGOs) in civil society have revealed themselves to be deeply ambivalent, if not outright antagonistic, towards democracy. As we chart in this introduction and as Eli Elinoff demonstrates in the subsequent article, NGOs have their own interests at heart and their positions regarding social and political rights are often clouded by their own paternalistic and elitist views towards their constituents. Like any institutions or actors in the political system, NGOs must protect their interests, and if threatened by other forces in the system, they can react against such forces even if a consequence of that reaction may be to undermine democracy.

Second, judicial courts and constitutional reforms have operated in the interest of traditional, conservative elites rather than in the interest of the broader public. As Duncan McCargo analyses in this issue, judicial courts have acted numerous times in a partisan manner that have ultimately moved against liberal democratic values or against the rule of law. Many of the decisions of the judicial courts in Thailand therefore reflect political interests rather than the objective application of the rule of law. Furthermore, efforts to reform the constitution have fallen prey to different political interests seeking to manipulate the system in their favour. The constitution thus has not served as a document that can enshrine the rights of its citizens and that can objectively create a just system of institutional accountability, but instead has been deployed as a *deus ex machina* to resolve all the partisan battles that divide the Thai elites.

Third, we also see in Thailand that its current ideological division between the Red Shirts and the Yellow Shirts has led to unexpected outcomes. So, for example, bans on political parties — that have become increasingly commonplace in Thailand — should undermine support for democracy among the party's supporters, yet the opposite is in fact apparent. As Aim Sinpeng demonstrates in this issue, bans on political parties have not affected the relative support of parties, particularly those associated with ousted former Prime Minister Thaksin Shinawatra. Thailand's deep polarization has led to strong support for political parties from groups on different sides of the aisle. Finally, it is generally assumed that electoral violence will wane as democracy becomes more consolidated, but the Thai case demonstrates that the effect of democratization on political violence is not a straightforward one. In this issue, Prajak Kongkirati argues that electoral violence increased during the 2001 and 2005 elections because of Thaksin's intervention at the local

level, whereby his alliances with some local elites made the struggle for parliamentary seats even more fraught. The articles in this special issue thus explore the themes of civil society, an activist judiciary, political violence and party bans that together complicate simple theories about the building blocks of democracy and democratization.

Two factors critical to Thailand's democratic woes — civil society and political institutions — will be the focus of this introductory article to the special issue. In our discussion, we show that interests matter and that they are fragmented and in most instances they tend to supersede other efforts at strengthening democracy. Institution building remains instrumental despite the long period of “crafting”. Building more institutions has not, and will not, get Thailand closer to democratic ideals as long as these institutions remain at the whims of political elites who devise them. Likewise, while the growth of civil society bodes well for the overall expansion of political participation, the extent to which civil society helps to breed democratic behaviour and values remains extremely mixed.

The article proceeds as follows. The first section charts the development of civil society in Thailand. Beginning with democratization in the 1970s, Thailand has gradually opened up its space for new actors and groups. The 1990s witnessed the greatest expansion of the “people's sector”. We advance the following claims regarding the relationship between civil society and democracy in Thailand. First, civil society can grow in both democratic and authoritarian times. Civil society can emerge and be nurtured during authoritarianism. Second, there is no unified conception of democracy for civil society. In other words, civil society organizations can and do have diverse understandings of democracy. Third, the extent to which civil society groups lend support to democracy depends on how their interests are aligned. Civil society organizations are more likely to support democratic development if they can benefit from it. We warn against automatically assuming that civil society, by its very nature, must support democratic development.

The second section looks at the crafting of political institutions through constitution-making. Here we compare the 1997 Constitution with the 2007 Constitution and show that each one had a clear purpose. The 1997 Constitution sought to undermine patronage-style politicians by strengthening the executive and political

parties. However, this strengthening went much beyond what the constitutional drafters intended and as a result Prime Minister Thaksin Shinawatra and the Thai Rak Thai (TRT) Party were able to dominate the polity in an unprecedented manner. The 2007 Constitution was therefore a direct response to the unintended effects of the 1997 Constitution. In order to prevent such a situation from recurring, constitutional drafters selected by the military made every effort to return the political system to the pre-1997 framework, where political party identity was weak and where the executive was more easily constrained by Members of Parliament (MPs). Following the 2006 coup, what we also see is that a key institution, the Constitutional Court, which was intended to provide checks and balances in the system, has ended up openly siding with the royalist-Yellow Shirt camp in handing down ruling after ruling that have sought to undermine Thaksin's position.

Civil Society in Thailand

Our analysis in this section focuses on what Thais refer to as “the people's sector”: a broad category of NGOs, interest groups and labour unions. We choose to focus on the grassroots, organized form of civil society so that it is sufficiently specific. The non-profit sector in Thailand experienced its greatest expansion alongside the process of political liberalization in the 1980s and subsequent democratization in the 1990s. The expansion of civil society and the rise of NGOs and people's movements contributed to democratic development in Thailand by allowing greater public participation in politics. Civil society organizations create channels for the articulation, aggregation and representation of interests. They act as a brokerage between the people and the state. NGOs help lobby for local groups — those often marginalized or negatively affected by state policies — directly with state officials, be it at the local or national level. The most famous civil society phenomenon in the 1990s was the Assembly of the Poor, which grew out of a campaign by villagers in northeast Thailand against the controversial Pak Mun Dam. This was the first nationwide organization to emerge since the Peasants' Federation of Thailand in the 1970s.¹ In 1997, the Assembly staged a 99-day rally in Bangkok and succeeded in extracting important concessions from the government on livelihood compensation for those affected by the construction of hydroelectric dams, review of certain projects and an end to eviction of long-standing residents from areas classified as forest.²

However, not all people's movements mobilize for open politics and democracy. A careful analysis of Thai political history illustrates that there have been instances of major civil society organizations supporting non-democratic governments or state agencies. Prajak Kongkirati argues that the counter-movements against the student-led leftist coalition in the 1970s were not only right-wing in nature, but were supported by some sections of the middle class, particularly those in Bangkok.³ The success of the student movement and its popular uprising "motivated conservative elements and the elites to counter-mobilize".⁴ The rightists, who were responsible for the massacre of students at Thammasat University on 6 October 1976, formed organizations to counter the peasants, workers and students around 1975.⁵ The Red Gaurs and Nawaphon⁶ were supported by elements within the military, the police and anti-communist agencies, whereas the Village Scouts publicly received funding from the then fledgling democratic government.⁷ The Red Gaurs mobilized under the ultranationalist framework of "nation-religion-king" while Nawaphon claimed to be representing underprivileged youth. The Village Scouts, officially endorsed by the state, were the largest counter-movement with a membership of more than 20,000 drawn almost exclusively from the middle class in Bangkok.⁸ Indeed the political violence under this alliance of a right-wing coalition with the Thai state has presaged the patterns of political violence in contemporary Thailand, a theme explored in detail in Prajak Kongkirati's contribution to this issue. Katherine Bowie's influential work on the Village Scout Movement points out how this movement, supported by the upper and conservative middle classes, was right-wing in its orientation.⁹

Despite the greatest expansion of the people's sector in the 1990s, civil society organizations in Thailand remained evidently ambivalent towards democracy. On the one hand, many NGO leaders recognized that democracy was the best system for promoting civic rights and guarding against the abuse of the state. On the other hand, there was no consensus as to what kind of democratic rule is most desirable. The Thaksin government (2001–06) exposed this contradiction within the people's sector and brought to the fore NGOs' deep-seated skepticism of representative and electoral democracy.

The opposition of the people's sector to Thaksin also highlights the importance of studying the interests of civil society groups. The question of "interests" is also addressed in this special issue in Eli Elinoff's article on civil society, where deep tensions between the

interests of NGOs and those of the poor become apparent. NGOs by definition either represent the interests of the groups whose conditions they seek to ameliorate or their financiers. However, it should be emphasized that NGOs are at bottom interest groups and that they will necessarily have a tendency to favour any government or political arrangement that affords them power and the space to operate. The ideal system for them may be one of “grassroots democracy”. Yet whatever shape and form the regime takes, NGOs want space to grow and expand as well as to have access to power for them to bargain *vis-à-vis* the state. If we thus think of NGOs as rational actors with their own specific interests, we should not be surprised that one of their central goals is to gain a greater share of political power.

NGOs are thus necessarily political and are not inherently democratic.¹⁰ Insofar as being a part of civil society means embracing a form of deliberative democracy, we qualify that in the Thai case, key civil society organizations choose to support the notion of deliberative democracy only in instances where they can advance their interests. In other words, some Thai NGOs only support democratic deliberation if they can protect their interests and/or gain additional resources. As conditional supporters of deliberative democracy, Thai NGOs are thus amenable to, or even eager for, military intervention despite the possibility that such intervention will curtail their space to operate. We also note that we choose in this article to discuss specific groups of civil society that have shown support for undemocratic processes and institutions, while there are also others that have very different values and positions such as the Red Shirt Movement.¹¹

Civil Society, NGOs and the Anti-Thaksin Campaign

The rise to power of Thaksin Shinawatra, the first prime minister to be elected under the new 1997 Constitution, dramatically changed the relationship between the state and the people’s sector in two important ways. First, Thaksin’s electoral dominance and his party’s absolute majority placed the opposition in an extremely difficult position. Second, Thaksin’s populist and reformist policies were perceived to displace and marginalize civil society organizations.

The core group in civil society that mobilized against Thaksin was the People’s Alliance for Democracy (PAD) that coalesced and took form in 2006. The PAD was composed of, and driven by, groups in society that were not only made worse off as a result of

Thaksin's policies, but whose channels to convey grievances were closed off. This happened in a highly arbitrary manner in both the formal and institutional arenas. Opposition parties in the legislature, some sections of the Senate, and independent bodies joined forces with the PAD for the following reasons: the inability to provide effective opposition to the government; the failure to provide effective checks on the executive; and the inability to propose alternative policies. There was, in essence, a breakdown of opposition mechanisms inside formal democratic institutions that crippled opposition voices.¹²

The people's sector, particularly NGOs that sharply criticized Thaksin's policies and leadership style, found their political space severely shrunk. While in the 1990s, many of the civic groups were hugely influential in the drafting of the famous "People's Constitution of 1997", they were marginalized during the Thaksin period. Their hope to lobby for some influence through some key leftist individuals inside TRT was soon quashed as their voices were ignored.¹³ Thaksin also turned out to have "betrayed" the good intentions of the 1997 Constitution, prompting the opposition in the formal democratic institutions to be paralysed and other opposition groups to be marginalized.¹⁴ The "shock" and "disappointment" within the people's sector prompted them to take to the streets.¹⁵ The anti-Thaksin protests began as early as 2002, only one year after TRT took power, and escalated to a high point just prior to the 2006 coup.

The opposition by civil society organizations against Thaksin and his government can be categorized in two major ways: sectoral and ideological. Many NGOs, labour unions and other civil society actors came out in opposition to Thaksin first and foremost due to their disagreement over a very specific set of government policies. In this group there were four key sectors whose civil society organizations came out to protest against the Thaksin government: (1) state enterprise workers; (2) teachers' unions; (3) media activists; and (4) grassroots networks against mega-projects. As the opposition from the people's sector continued, it became clear that many of the NGOs were ideologically against TRT party platforms.

Thaksin's populist policies were not welcomed by much of the NGO community.¹⁶ While some of the opposition to populism was disagreement over the nature and direction of government policies, others in the NGO community joined the opposition forces to protest the shrinking of NGO influence as a result of these policies. Thaksin's populist platform in essence was tantamount to

encroaching or taking over political space occupied by the people's sector. It allowed the state not only to expand its presence and influence in the countryside, but it also encroached on the right of communities to mobilize in favour of alternative initiatives while at the same time closing up opportunities for communities to have the right to choose which way to develop or progress. When Thaksin sought to destroy the credibility of NGOs by accusing them of taking money from foreign donors or provoking violence in 2002, the TRT government reinforced the state authorities' right to deal with protesters as they saw fit. TRT's populist policies in essence rapidly weakened the ability of popular politics to mobilize.¹⁷ NGOs were forced to compete with the state on similar issues.

The Thaksin government's tough stance and hostile attitude towards some civil society organizations further created a rift between the people's sector and the government, breeding distrust and hostility. Jaturon Chaisaeng, a leftist in Thaksin's government, notes that: "The Thaksin government always held that the roles of the middlemen should be eliminated and direct communication with people has to be established."¹⁸ Because Thaksin thought the role of the NGOs should be eliminated, the divide between himself and the civil society sector necessarily widened. Towards the end of 2002, Thaksin showed obvious frustration with lingering demonstrations of the Assembly of the Poor, Small-Scale Farmers' Assembly and Pak Mun Dam activists, for instance, and he sought to discredit the NGOs' credibility. He accused NGOs of "taking money from foreigners" and "inciting violence".¹⁹ Thaksin told the Pak Mun Dam communities: "I want to consult with the people who experience problems directly. I don't want to discuss with NGOs, which act like their advisors ... NGOs are like salesmen ... they make commission off poor people."²⁰ Some of the NGO key leaders had their bank accounts probed without cause.

Thaksin's government was also unreceptive to opposition media.²¹ The open war with the media started when the government directed the National Anti-Corruption Commission to investigate the finances of key figures inside the opposition media.²² The ABAC Poll, one of Thailand's leading polling agencies, was threatened by the government and attempts were made to remove political news from channels that presented critical views of the government. By early 2003, the Thai Journalists Association made a public statement condemning the government for cracking down on media independence through the abuse of state power, personal wealth, and connections and intimidation.²³

The most dramatic, and arguably the worst, move made by Thaksin in his attempt to suppress opposition voices was the cancellation of the popular talk show “Thailand Weekly”, which was run by Sonthi Limthongkul’s Manager Group. Instead of silencing Sonthi, dropping his show prompted the rapid rise of what became known as the “Sonthi phenomenon”.²⁴ Popularized by his vocal opposition to Thaksin, Sonthi embarked on a crusade to rid Thaksin from the political scene. He and his Manager Media crew began to hold “Thailand Weekly Mobile”, first at a public university and then at parks. Eventually hundreds of thousands turned up to listen to what Sonthi had to say.²⁵ His ability to draw large crowds at rallies and many more on television and radio via his media channels made him a strong candidate for the PAD leadership.²⁶ As such, when the PAD was born in 2006, leaders of many other opposition groups all agreed Sonthi would be *primus inter pares*.

Anti-Thaksin opposition groups, which had separately protested against the government, eventually formed a collective alliance in early 2006 to permanently oust Thaksin. The PAD was an anti-Thaksin movement that brought together a broad range of groups whose interests were adversely affected by the Thaksin regime. Despite the diversity of the groups that have allied themselves under the rubric of the PAD, the nature of the PAD core was exemplified by their five top leaders: Sonthi Limthongkul, representing the fight against Thaksin’s crackdown on the media; Chamlong Srimuang, symbolizing the struggle against Thaksin’s money politics; Pipob Thongchai, exemplifying opposition to Thaksin’s political reforms; Somkiat Pongpaibul, representing the movement against Thaksin’s plan to reform the bureaucracy; and Somsak Kosaisuk, spearheading forces against Thaksin’s plan to privatize state enterprises.²⁷ Drawing on the networks of the core leaders themselves and other non-NGO anti-Thaksin groups, such as opposition parties, opposition senators, Buddhist sects, academics, high-ranking civil servants and students,²⁸ the PAD came together to form an alliance in February 2006, just months before the September 2006 coup. Indeed, the PAD’s core leader and media tycoon Sonthi commented: “If you asked me whether the PAD called out for a military overthrow [of Thaksin] ... I think so ... I always say [political] change can only be brought about in two ways, one via a coup and another through gradual change. The army should launch a coup as long as they do it for the country, and not for themselves.”²⁹

The PAD Movement was truly a popular, broad-based movement whose members, as noted above, were drawn from various sections of society. While the majority of the PAD members belonged to the urban middle class, what drove their mobilization was not their economic positions, but rather their royalist-conservative ideologies. The various NGO, labour and interest groups opposed Thaksin and TRT because their opposition voices were shut out and marginalized. The opposition forces believed that there was no place for them in the political arena as long as Thaksin and his party remained in power.³⁰

Thaksin chose to deal with the massive and increasingly violent protests and growing corruption scandals by dissolving Parliament and calling for a snap election in April 2006. The opposition argued that this was a ploy to regain power because TRT stood to win yet another election, given that elections were no longer seen to be fair. Solving the crisis through electoral means was thus dismissed by the opposition. For the first time ever, opposition parties boycotted the election leaving TRT as the only major party to contest it. The dissolution of Parliament, according to the opposition, shows that Thaksin reneged on three key “promises” that if he had fulfilled would have changed the course of opposition-government strategic interactions in ways that could have possibly avoided his downfall. First, he refused to be questioned by the National Assembly, an opportunity not only to engage with the growing opposition, but also his own supporters about the most controversial corruption scandal to date: the tax-free sale of his family business the Shin Corporation.³¹ Second, the opposition believed he had broken his promise to them and his own party that he would not dissolve Parliament and instead allow for a new coalition that would include opposition parties. Third, he said earlier that he would never step down from being prime minister, but following an audience with the King, he did step down and remained as a caretaker prime minister. This last development should have been good news for the opposition but because a new election was called for in October 2006, after the Election Commission annulled the April election, the opposition was convinced that Thaksin would return as prime minister.³²

Supporters of the coup, many of whom were PAD members, have argued that the coup was a necessary step to restore democracy. Thaksin, they claimed, despite his electoral victories in 2001 and 2005, was not a legitimate leader and that he would have been able to continue to “fool” millions of his supporters to vote for him in every election. Thus, the PAD concluded that there was no other

way to get rid of him but to overthrow his government. In the words of a PAD leader: “The coup on 19 September 2006 was necessary for political change to occur with little to no loss [of lives] at all.”³³

Almost identical to the September 2006 coup, the lead-up to the May 2014 coup was also characterized by mass protests by civil society groups. In October 2013, some civil society groups along with the Democrat Party formed the People’s Democratic Reform Committee (PDRC) and launched a strident campaign against elections and Thaksin-aligned forces.³⁴ The ultimate goal of the PDRC, led by veteran Democrat Party politician, Suthep Thaugsuban was to oust the democratically-elected government of Yingluck Shinawatra. This campaign eventually culminated in the coup on 22 May 2014. Largely urbanized and rooted in the middle class,³⁵ the PDRC drew its base from former supporters of the People’s Alliance for Democracy (Yellow Shirts), which helped to oust Thaksin in the 2006 coup and his subsequent political parties, anti-amnesty opponents, civil society groups,³⁶ and Democrat Party supporters. The emergence and mobilization of the PDRC was triggered by the Yingluck government’s attempts to pass amnesty bills seen by the opposition — many of whom were supporters of the PAD — as a ploy to vindicate her exiled brother, Thaksin. The PDRC initially formed as an anti-government opposition to the amnesty bills and then evolved into larger-scale protests against elections, the Pheu Thai Party and what some of its supporters loosely called “the Thaksin regime”.³⁷

What was remarkable about the PDRC was that its movement was unabashedly anti-democratic. It first launched the “Bangkok Shutdown” campaign on 13 January 2014 to hold the government hostage in a desperate attempt to kill the upcoming election, following the lower house dissolution on 9 December 2013. This dissolution itself was the result of ongoing protests by the PDRC. The PDRC protesters occupied key areas within central Bangkok, including some twenty intersections at busy business districts for nearly two months (January–March 2014).³⁸ The PDRC then simultaneously launched its most anti-democratic campaign — “Reform before Election” — to call for an end to the current electoral system in Thailand. As PDRC leader Suthep vowed: “Elections must be postponed until we can guarantee free, just and honest elections, which we cannot do under the current [political] system ... We will not let the February election happen and will do whatever it takes to get rid of the Thaksin regime.”³⁹ The reform proposals included

the following key points: first, an appointed lower house based on professional groups; second, a fully appointed upper house; third, no career politicians involved in the reform process; fourth, good people (*khon dii*) in power; and fifth, new elections when all branches of government and bureaucracy are “cleaned” of Thaksin’s influence.⁴⁰ Indeed this proposal was really no different from the “Council of Democratic Reform”, which overthrew Thaksin in 2006. However, instead of being led by the military, the current proposal was the “people’s version” — led by the people, for the people, according to the PDRC. Following the May 2014 coup, whereby its leader, General Prayuth Chan-ocha became prime minister, the PDRC top leaders confirmed their support for the reforms being pursued by the military dictatorship as “following along the same lines as the PDRC”.⁴¹

Political Institutions: Constitutions and Constitutional Courts

Just as civil society can have perverse outcomes, similarly the crafting of institutions can have very different agendas and meanings. While in Western industrialized countries, constitutions have generally served the purpose of granting sovereignty to the people by clearly articulating their rights, and how those rights would be represented in political institutions, in Thailand constitutions and processes of institution-building have been clouded by clear efforts at advancing partisan interests, rather than at building popular sovereignty and institutions that would enshrine that sovereignty.

Thailand has now gone through nineteen constitutions, including the most recent interim 2014 Constitution promulgated by the military dictatorship of General Prayuth Chan-ocha. The fact that Thailand has had as many constitutions as it has had coup attempts is a clear indication that constitutions have often been drafted as a means to advance the political interests of the power holders. Many constitutions in Thailand have originated from military coups and were used as a means of institutionalizing the power of the armed forces. Yet, constitutions can also serve as a means to build democratic institutions, and in 1997 this is exactly what was attempted. In 2007, however, Thailand reverted back to its general tendency to use constitutions as political weapons for advancing vested interests. The contrast between the purposes of the 1997 and the 2007 Constitutions is therefore worth examining.⁴² What it shows is that constitutions have clear political agendas, whether to undermine clientelistic politics (the goal of the 1997 Constitution)

or to prevent dominant parties from emerging (the purpose of the 2007 Constitution). At the time of writing, Thailand is in the process of planning its twentieth constitution as a consequence of the 2014 military takeover. With the tight grip that General Prayuth has maintained over the polity, it is expected that this new constitution will reflect most directly the military's interests as well as those of the traditional, conservative political elite.

The 1997 Constitution was one of the most democratic in Thailand's history. In response to the 1991 coup and the subsequent violence in May 1992, liberal reformers from civil society, academia and technocratic civil service got together to draft a new constitution that would strengthen democracy. The emphasis, at the institutional level, was in granting more political openness while also concentrating power. For the liberal reformers, the greatest weakness of Thai democracy was thought to be the patronage style rural politicians who were able to cobble together coalitions of parties with little foundation in programmes and political identity. The new constitution therefore sought to end the cycle of weak governments led by clientelistic politicians and, in particular, the ability of factions to hold coalitions ransom by demanding cabinet seats as a means to funnel spoils to their MPs.

In order to weaken clientelistic politicians and the power of legislative factions, the 1997 Constitution sought to divide the executive and the legislature more clearly. At the executive level, the prime minister's office was greatly strengthened in three ways. First, censure motions against the prime minister could only be initiated through a two-fifths vote in the lower house. In addition, censure motions against cabinet members could only be initiated through a one-fifth vote. Second, MPs would lose their seats if they left their party and would only be able to join a party within ninety days of registration for a new election. Third, there was an incentive to pick cabinet members from the party-list (a new innovation) rather than from MPs hailing from constituencies because any MP who gained a cabinet seat would lose their parliamentary seat, while those coming from the party-list would simply be replaced by members of their party. All of these measures were intended to limit the power of the MPs *vis-à-vis* the executive.

At the legislative level, the lower house was transformed into a mixed-member system with 400 single-seat constituencies and 100 party-list seats. The intention of the mixed-member system was to promote programmatic party development. This would come about through voting for a party on the party-list, where members on

the list were supposed to represent broader national priorities. The single-member constituencies would also replace the multi-member constituencies and therefore emphasize party voting, rather than splitting of votes among different parties in a constituency. The Senate was made a fully directly elected house with 200 non-partisan members elected through the single non-transferable vote (SNTV) system. Other important institutional bodies created to provide robust checks and balances were the Election Commission of Thailand (ECT), the Constitutional Court, the Administrative Court, and the National Anti-Corruption Commission.

The Constitution worked exactly as it was intended by strengthening political parties and the executive. But the constitutional drafters had not foreseen *how much* it would strengthen parties and the executive.⁴³ With the phenomenal popularity of Thaksin and his party's populist policies, in the election of 2001 TRT gained an absolute majority in the lower house after absorbing several parties. In 2005, TRT won an outright majority with the largest landslide in Thailand's democratic history. The effect of such stunning electoral victories along with the new constitutional rules ensured parliamentary dominance by one party. The opposition was unable to censure cabinet members of the prime minister, while MPs were constrained from leaving the party. Under these conditions, TRT was unassailable in Parliament. Along with this dominance, Thaksin's efforts to penetrate the Senate and the independent agencies, such as the Constitutional Court, the Anti-Corruption Commission, and the ECT, made clear that the situation had become untenable for the opposition, and that the institutional rules had in effect helped create a Frankenstein's monster out of all proportions to what the constitutional drafters had imagined.

The resulting 2006 coup against Thaksin was therefore an ironic and unintended consequence of a constitution that was supposed to have democratized Thailand. Instead, as TRT became dominant, the same middle-class elites who had championed the 1997 constitutional reforms now sought to change institutional structures in order to prevent the recurrence of a dominant party. In sharp contrast to the 1997 Constitution, the 2007 post-coup version was orchestrated by the military. The 200 members of the Constitutional Drafting Assembly (CDA) were elected from the legislative assembly, the National People's Assembly,⁴⁴ which had been handpicked by the military. Inevitably, the CDA was populated by bureaucrats, members of the private sector and urban

elites. The debates in the CDA centred on how to prevent the concentration of power by a dominant party. Discussions focused especially on the role that the independent oversight agencies and the judiciary could play in diffusing power.⁴⁵

The executive branch was made significantly weaker in the 2007 Constitution. First, the prime minister was limited to only two terms in office. Second, MPs were no longer required to give up their seat once they had been given a cabinet post. Third, it became much easier to censure the prime minister or a cabinet member. Only one-fifth of MPs (instead of two-fifths in the 1997 Constitution) were now needed to initiate a motion of no confidence against the prime minister and only one-sixth (instead of one-fifth) against an individual minister. Furthermore, once the executive branch had been in power for two years, over half the number of opposition MPs could file for a debate to censure the prime minister. This lowering of the threshold necessary to challenge and undermine the executive stands in stark contrast with the raising of the threshold to strengthen the executive in the 1997 Constitution.

The constitutional changes regarding the legislature were intended to bring back the earlier days of fragmented and personalistic parties. The party-list was reduced to 80 MPs from 100, while the structure was changed so that the party-list MPs were now spread out over eight large regions (ten MPs per region). This in effect reduced the chance of a concentration of MPs from a particular party because of the effort to disperse MPs in different regions with different allegiances to parties. At the constituency level, single-member districts were eliminated in favour of multi-member districts, with the clear intent of bringing back an emphasis on individual politicians rather than party labels. Finally, the Constitution removed any penalties for party switching prior to the next election.

A crucial change was to make the Senate a partly elected body. Only 76 senators were to be elected, while 74 others were to be appointed by a seven-member committee made up of judges and the heads of independent agencies. This ensured that bureaucrats would form a core part of the Senate. It furthermore created a clear conflict of interest because Senators would be chosen by agencies for which they are also responsible for appointments.

Finally, one crucial new clause in the Constitution granted the Constitutional Court a powerful tool to undermine political parties. Article 237 provided the Constitutional Court the power to ban individual MPs and to dissolve a party if one of its members violated election laws with the knowledge of a party executive.

The Constitutional Court was thus granted significant powers to shape the nature of party politics and competition. The significance of party banning is discussed in detail in Aim Sinpeng's article in this issue.

The 2007 Constitution was an undisguised move by the military and urban elites to rig the political system in favour of a fragmentation of power, particularly through an emasculated executive, weak parties, a powerful politicized judiciary as well as stronger independent agencies. The goal was unequivocal: to prevent a party like TRT and a figure like Thaksin from dominating the polity again.

What has thus become very clear is that institutions that are meant to act as checks and balances for democracy have been operating more and more in a partisan manner. Such problems with the neutrality of public institutions were already apparent in the early days of the Constitutional Court, whose contradictions are narrated extensively in Duncan McCargo's article in this issue. While there was a general sense that the Constitutional Court was working in an objective manner following its inception on 11 April 1998, several controversial cases — all of which involved high-profile politicians — have led to significant questioning of the Court's neutrality. The first case involved a defamation lawsuit against Deputy Minister of Agriculture Newin Chidchob in 1999. The Court had to rule whether the judgement against Newin in a provincial court obliged him to vacate his cabinet position. The Court voted by 7–6 that Newin could hold his cabinet seat. This decision was met with extensive criticism.⁴⁶ The most controversial ruling, however, was the decision by the Court in 2001 to acquit Thaksin Shinawatra of failing to file a complete statement of assets and liabilities. By a quirk in the way votes were counted, the Court voted 8–7 that Thaksin was not guilty.⁴⁷ The view that the Constitutional Court had been politically influenced in its decision was reinforced by the fact that the Court — in contrast to Thaksin's case — had agreed with the indictments of the National Counter Corruption Commission in all seventeen similar cases of either failing to submit a statement of assets and liabilities or submitting an incorrect statement. This included a widely praised unanimous verdict against the Secretary-General of the Democrat Party, Sanan Kachonprasart.

This partisanship that appeared to favour Thaksin during his heyday has, following the 2006 coup, now turned to support the conservative royalist position against that of Thaksin and the Red Shirts. On 30 May 2007, the Constitutional Tribunal under

the military regime heard a case from the ECT to disband TRT, Prachatiptai Kaona, the Democrat Party, Pattana Chart Thai and Pandin Thai, for electoral irregularities allegedly committed during the April 2006 elections. All parties were banned except the Democrat Party. On 9 September 2008, the Constitutional Court ruled that Prime Minister Samak Sundaravej had to step down for hosting a television cooking show while head of the government. The Court argued that this was a conflict of interest between the public and private sector. Samak counter-argued that he was not an employee of the television company and that he had received no remuneration except transportation costs. However, the Court ruled unanimously that by a general definition of “employee”, Samak had acted as such and that there was conflicting evidence as to whether he had been remunerated. According to the law, Samak was guilty.⁴⁸ However, given the substance of the potential conflict of interest — a cooking show — many analysts saw this as a gross overreach by the Court.

On 2 December 2008, the Constitutional Court banned three parties — People’s Power Party (the successor to TRT), Chart Thai, and Matchimatipatai — for electoral misconduct by party executives during the 2007 elections. Finally, on 21 March 2014, the Constitutional Court voted by 6–3 to annul the 2 February 2014 elections on the grounds that the polls were not all held on the same day. The irony of this last decision was that it was in fact the protesters led by former Democrat Party Deputy Prime Minister Suthep Thauksuban who had prevented the elections from being held peacefully across the country. What is notable is that all these rulings following the 2006 coup were unequivocal in their message: Thaksin and his parties were now in the cross-hairs of the judicial establishment and those it represented. All these rulings went so blatantly and *so consistently* against Thaksin’s side, including the banning of all parties accused of electoral misconduct in April 2006, except the Democrat Party. The Constitutional Court, a product of the 1997 Constitution, was thus a veritable political actor, swinging like a pendulum, in the ongoing battle between Thaksin and the Red Shirts on one side and the royalists and the Yellow Shirts on the other side.

Thus, it is clear that political elites in Thailand have acted on the notion that institutional engineering is a decisive way for advancing particular political interests. The result of this process of constant tinkering with constitutions has been to undermine political parties and to politicize institutions, such as the judiciary, that in

an ideal democratic system should maintain some distance from the legislature so that it will keep at least a façade of impartiality. In the absence of impartiality, it becomes very difficult for different interest groups who are on the losing end of judicial verdicts to trust the fairness of judicial institutions.

Conclusion

One of the central problems in contemporary Thailand is the absence of a solid foundation for the democratic system. Institutions and social groups that should work towards building democracy are in fact moving in very different directions. Civil society has revealed itself to be ultimately deeply rooted in self-interest and willing to openly oppose and undermine democratically elected governments. Constitutions and independent agencies meant to ensure accountability in a democratic polity have proven to be largely shells for partisan politicking and have shifted positions based on which political elite holds the upper hand. In essence, two central pillars generally associated with democratic consolidation — civil society and political institutions — are far from this ideal in Thailand. They are instead actors with partisan interests, devoid of any core liberal, democratic base.

The articles that follow seek to deepen the central theme of this special issue by focusing on elements of civil society as well as political institutions. The first article by Eli Elinoff explains why some key NGOs have turned against democratic politics as a result of a fundamental difference in ideas of democracy and citizenship. Elinoff argues that NGOs have conceived of politics in a very paternalistic manner, “governing” over the constituents they purportedly represent — the poor — precisely because the poor are not considered political subjects. In the second article, Prajak Kongkirati analyses the rise and decline of electoral violence, arguing that violence rose in the 2001 and 2005 elections because of greater competition for seats as a result of the 1997 Constitution and Thaksin’s dominance, while violence declined in the 2007 and 2011 elections due to royalist-military intervention and the weakening of local bosses. The third article by Duncan McCargo on the judicial system in post-coup Thailand argues that interventions by the courts have not supported the country’s democratic development. Instead, the courts have deepened the political conflict and destabilized the democratic polity, which theoretically relies on a legitimate, impartial judicial system. Finally,

the fourth article by Aim Sinpeng examines the cases of party banning in Thailand as a political tool to weaken political opposition. Such banning has both exposed the weakness of the Thai party system as well as destabilized its role in aiding the country's democratic development. The article concludes that while the legitimacy of the party system is not crippled by the banning of parties, the autonomy of parties has been weakened.

The Thai political system is thus in great flux. With institutions failing to work in a rational-legal manner or strengthening democratic rule of law, and with social forces deeply ambivalent about liberal democracy, Thailand's crisis will most likely be very protracted. Military rule for the sake of stability and "reform" would appear to be a superficial band-aid obscuring real need for honest debate about the nature of the country's institutions, social groups and political elites.

NOTES

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- ¹ Bruce Missingham, *Assembly of the Poor in Thailand: From Local Struggles to National Protest Movement* (Chiang Mai: Silkworm Books, 2003).
- ² See for example: Erik Martinez Kuhonta, *The Institutional Imperative: The Politics of Equitable Development in Southeast Asia* (Stanford: Stanford University Press, 2011), pp. 177–81; Erik Martinez Kuhonta, "Development and its Discontents: The Case of the Pak Mun Dam", in *Agrarian Angst and Rural Resistance in Contemporary Southeast Asia*, edited by Dominique Caouette and Sarah Turner (London: Routledge, 2008), pp. 135–58; Chris Baker, "Thailand's Assembly of the Poor: Background, Drama, Reaction", *South East Asia Research* 8, no. 1 (2000): 5–29; Prapas Pintobtaeng, *Politics on the Streets: 99-day Assembly of the Poor Demonstration: History of Marching and Protesting* (Bangkok: Kruek University, 1998).
- ³ Prajak Kongkirati, "Counter-movements in Democratic Transition: Thai Right-wing Movements after the 1973 Popular Uprising", *Asian Review* 19 (2008): 101–34.
- ⁴ Prajak, "Counter-movements in Democratic Transition", op. cit., p. 25.
- ⁵ Charnvit Kasertsiri and Thamrongsak Petchlertanand, eds., *Chak 14 thueng 6 tula [From 14–6 October]* (Bangkok: Thammasat University Press, 1998).
- ⁶ The Nawaphon and Red Gaurs are right-wing groups that emerged during Thailand's political crisis in 1976. These groups were conservative and used

- violence against other groups. Most notably, the Nawaphon and Red Gaurs were believed to have been responsible for several deaths during the crisis, particularly following clashes with student groups. For more information, visit the commemorated website of the 1976 October Incident, available at <www.2519.net>.
- ⁷ Chak 14 thueng 6 tula, op. cit., pp. 61–64.
- ⁸ Prajak, “Counter-movements in Democratic Transition”, op. cit., p. 25.
- ⁹ Katherine Bowie, *Rituals of National Loyalty: An Anthropology of the State and the Village Scout Movement in Thailand* (New York: Columbia University Press, 1997).
- ¹⁰ Existing literature that espouses the inverse relationship between civil society and democracy include some of the following: Eva Bellin, “The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective”, *Comparative Politics* 36, no. 2 (2004): 139–57; Sheri Berman, “Islamism, Revolution, and Civil Society”, *Perspective on Politics* 1, no. 2 (2003): 257–72; Omar G. Encarnación, “Venezuela’s Civil Society Coup”, *World Policy Journal* 19, no. 2 (2002): 38–48; Sheri Berman, “Civil Society and the Collapse of the Weimar Republic”, *World Politics* 49, no. 3 (April 1997): 401–29.
- ¹¹ For discussion of the Red Shirt movement, see Aim Sinpeng, “The Power of Political Movement and the Collapse of Democracy in Thailand”, Ph.D. thesis, University of British Columbia, November 2013; Aim Sinpeng and Erik Martinez Kuhonta, “From the Street to the Ballot Box: The July 2011 Elections and the Rise of Social Movements in Thailand”, *Contemporary Southeast Asia* 34, no. 3 (2012): 397–402; Apichart Sathitniranai, “Krai kue sua daeng: mob wa jang prai rue klum chonchan klang mai” [Who are the Red Shirts? Money-Hungry Mob, Prai, or the New Middle Class, Thailand at a Crossroad], in *Daeng Tammai: sangkhom Thai panha lae kanma kong sua daeng* [Red Why: Thai Society, Problems and the Emergence of the Red Shirts], edited by Pinyo Traisuriyathorn (Bangkok: Openbooks, 2010), pp. 14–35; Nithi Aeosriwong, “Karn muang kong sua daeng” [The Politics of the Red Shirts], in *Aan karn muang Thai 3: kan muang kong sua daeng* [Reading Thai Politics 3: The Politics of the Red Shirts] (Bangkok: Openbooks 2010), pp. 10–15.
- ¹² Aim, “The Power of Political Movement”, op. cit, Chapter 2.
- ¹³ Such as Poomtham Wetchachai, Jaturon Chaisaeng and Mingkwan Sangsuwan.
- ¹⁴ See the special issue edited by Michael Connors and Kevin Hewison that discusses the debate over the justification of the coup in *Journal of Contemporary Asia* 38, no. 1 (2008).
- ¹⁵ Giles Ungpakorn, “Thammai ngo kao kang ammat” [Why did NGOs side with ammat?], *Red Thai Socialist*, 28 February 2011, available at <<http://redthaisocialist.com/2011-01-20-12-39-38/112-2011-02-28-16-44-45.html>>.
- ¹⁶ Pipob Thongchai, “Pathiroop prathet thai nai tassana khong pipob thongchai” [Political reforms in the eyes of Pipob Thongchai], *On Open*, 11 April 2010, available at <<http://www.onopen.com/open-special/10-04-11/5337>>.
- ¹⁷ Kengkij Kitirianglarp and Kevin Hewison, “Social Movements and Political Opposition in Contemporary Thailand”, *Pacific Review* 22, no. 4 (2009): 451–77.

- ¹⁸ Jaturon Chaisaeng, *Thai Democracy in Crisis: 27 Truths* (Bangkok: Institute of Democratization Study, 2011), p. 125.
- ¹⁹ “Ratthaban thaksin chinnawat kap yutthawithi nai kan ‘dotdiao’ en chi o chak chaoban” [Thaksin government and its strategies to marginalize grassroots NGOs], *Matichon Weekly*, 30 December 2002, p. 8.
- ²⁰ “Nakwichakan rum kinto rat mua nim khomun khonchon” [Academics slammed government for making up data on the poor], *Naewna*, 9 December 2003, available at <http://www.thaingo.org/story/news_005.htm>.
- ²¹ See a detailed discussion of this point in Supinya Klanarong, *Pud kwang jing* [*Telling the truth*] (Bangkok: Openbooks, 2007), pp. 189–96.
- ²² “Patibatkan popongo truatsoop sapsin sue” [A new mission to investigate finances of the media], *Matichon*, 11 June 2002.
- ²³ “Samakhom nakkhao paiyannoi chae rat khukkham sue” [The Thai Journalists Association claimed the government violated media rights], *Thairath*, 3 January 2003.
- ²⁴ For a detailed discussion of the Sonthi phenomenon, see Kamnoon Sithisaman, *Prakotakarn sonthi chak suea si lueang thueng phaphankho si fa* [Sonthi’s phenomenon: From yellow shirt to blue bandana] (Bangkok: Ban Pra Athit Press, 2011).
- ²⁵ One of the biggest rallies took place on 4 February 2006.
- ²⁶ Sonthi Limthongkul and Sarocha Pornudomsak, *Muang thai rai sabda san jon* [Thailand Weekly mobile] (Bangkok: Ban Pra Athit Press, 2006).
- ²⁷ People’s Alliance for Democracy, *PAD Saving the Motherland: Proof of Bravery, Sacrifice and Ahingsa* (Bangkok: Tawan Aok Publishing, 2009), p. 99.
- ²⁸ “Thap phanthamit ku chat yan khluean phon khao lan phrarup 14.00 no” [PAD army saving the nation to mobilize in front of the Royal Plaza at 14:00], *Manager Online*, 11 February 2006, available at <<http://www.manager.co.th/Home/ViewNews.aspx?NewsID=9490000019100>>.
- ²⁹ *PAD Saving the Motherland*, op. cit., pp. 386–87.
- ³⁰ Suriyasai Katasila, *Panthamit prachachon prachathipathai* [Alliance, people and democracy] (Bangkok: Openbooks, 2007), pp. 104–6.
- ³¹ “Thaksin Helps Himself”, *The Economist*, 26 January 2006.
- ³² Author interview with Somsak Kosaisuk and Suriyasai Katasila, July 2012.
- ³³ *Sonthi’s phenomenon*, op. cit., p. 1.
- ³⁴ In particular the Red Shirt Movement, which was supporting the government of Yingluck Shinawatra, the ruling Pheu Thai party (2011–14) and pro-Thaksin political elites and groups.
- ³⁵ Surveys conducted by the Asia Foundation of the PDRC protesters found that three-quarters of the participants were university graduates. See “Profile of the Bangkok Shutdown Protesters”, *The Asia Foundation*, January 2014, available at <<http://asiafoundation.org/resources/pdfs/THPDRCSurveyReport.pdf>>.
- ³⁶ For a detailed discussion of the composition of the PDRC, particularly from the civil sector, see Aim Sinpeng, “Who’s who in the Anti-Government Forces in Thailand”, *New Mandala*, 30 November 2013, available at <<http://asiapacific>>.

- anu.edu.au/newmandala/2013/11/30/whos-who-in-the-anti-government-forces-in-thailand/>.
- ³⁷ “Thon rak thon khon khon rabop thaksin khamtham thi “kamnan” tong top muan maha prachachon” [Uprooting the Thaksin regime: Questions that kamnan must answer to the mass], *ASTV Weekly*, 24 May 2014, available at <<http://www.manager.co.th/AstvWeekend/ViewNews.aspx?NewsID=9570000057675>>.
- ³⁸ Terry Fredrickson, “As shutdown nears, anxiety grows”, *Bangkok Post*, 6 January 2014, available at <<http://www.bangkokpost.com/learning/learning-from-news/388107/as-shutdown-nears-anxiety-grows>>.
- ³⁹ Suthep Thaugsuban, speech at a PDRC rally at Victory Monument on 16 December 2013.
- ⁴⁰ “Su thep phut phimkhiao sapha prachachon — tang ratthaban chaphokan lueak nayok paiyannoi chak khon di” [Suthep discussed the blue-print of the people’s assembly, interim government and a good prime minister], *Prachatai*, 3 December 2013, available at <<http://prachatai.com/journal/2013/12/50181>>.
- ⁴¹ “Prayut ‘khik op senthang patirup” [Prayuth kicked off the road to reform], *Thairath Daily*, 10 August 2014, available at <<http://www.thairath.co.th/content/442355>>.
- ⁴² For a position that the 1997 and 2007 Constitutions are in fact quite similar, see Tom Ginsburg, “Constitutional Afterlife: The Continuing Impact of Thailand’s Postpolitical Constitution”, *International Journal of Constitutional Law* 7, no. 1 (2009): 83–105.
- ⁴³ Erik Martinez Kuhonta, “The Paradox of Thailand’s 1997 ‘People’s Constitution’: Be Careful What You Wish For”, *Asian Survey* 48, no. 3 (May/June 2008): 373–92.
- ⁴⁴ The National People’s Assembly of Thailand (NPA) was set up in 2006 following the coup. It was a committee consisting of citizens from various sectors convened to constitute the Constitution Drafting Assembly (CDA).
- ⁴⁵ Björn Dressel, “Thailand’s Elusive Quest for a Workable Constitution, 1997–2007”, *Contemporary Southeast Asia* 31, no. 2 (April 2009): 304.
- ⁴⁶ James R. Klein, “The Battle for Rule of Law in Thailand: The Constitutional Court of Thailand”, in *The Constitutional Court of Thailand: The Provisions and the Working of the Court*, edited by Amara Raksasataya and James R. Klein (Bangkok: V.J. Printing, 2003), p. 63.
- ⁴⁷ Four justices ruled that Thaksin was not obliged to submit any asset and liability statement. On this issue, the vote was 11–4 that Thaksin was required to furnish statements. Four other justices ruled that there was insufficient evidence to assess whether Thaksin was obliged to submit statements. On this issue, the vote was 7–4 against Thaksin. Yet, the procedural way of counting votes allowed the two minority positions to be added together, resulting in the acquittal of Thaksin by 8–7. See Klein, *ibid.*, p. 71.
- ⁴⁸ Verapat Pariyawong, “Three-Course Recipe for the Court’s Cookery: A Critique on Thai Democracy and Judicial Review”, Harvard Law School LL.M. Paper, May 2010, available at <<https://sites.google.com/site/verapat/legal-writings/master-of-laws-paper>>.

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